



August 31, 2017

Hon. Xavier Becerra  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed the proposed statutory initiative regarding hearings to determine whether to release certain individuals from prison (A.G. File No.17-0009).

## **Background**

***Indeterminate and Determinate Sentencing.*** Individuals are placed in state prison under an indeterminate sentence or a determinate sentence. Under indeterminate sentencing, individuals receive a sentence range, such as 25-years-to-life. As discussed below, these individuals are typically considered for release in hearings conducted by the state Board of Parole Hearings (BPH). Under determinate sentencing, individuals receive fixed prison terms with specified release dates. However, some of these individuals could be released before serving their entire sentence.

***Three Strikes Sentencing.*** Under existing state law, certain repeat offenders receive longer prison sentences due to a statute commonly referred to as the “three strikes” law. Specifically, state law requires that an individual who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- ***Second Strike Offense.*** If the individual had one previous serious or violent felony conviction, the sentence for any new felony conviction (not just a serious or violent felony) is twice the term otherwise required under law for the new conviction. Individuals sentenced by the courts under this provision are referred to as “second strikers.”
- ***Third Strike Offense.*** If the individual has two or more previous serious or violent felony convictions, the sentence for any new serious or violent felony conviction is a minimum of 25-years-to life. In addition, an individual with two or more previous serious or violent offenses who commits any new felony (not just a serious or violent felony) can be similarly sentenced to a life term if he or she has committed certain

new or prior offenses, including some drug-, sex-, and gun-related felonies. Individuals convicted under this provision are referred to as “third strikers.”

Proposition 57 (2016) made various changes that could decrease the amount of time that second and third strikers serve. For example, offenders can now earn additional sentencing credits that move up their release date. These credits can be awarded for good behavior and rehabilitative or educational achievements.

***Hearings to Determine Prison Release.*** BPH conducts hearings to determine whether certain individuals should be granted release from prison. Individuals who are granted release are supervised by state parole agents or county probation departments depending on the crimes they committed. Individuals with an indeterminate sentence receive a lifer hearing conducted by BPH after serving all but one year of their minimum sentence to determine whether they are ready to be released from prison after the entire minimum sentence is served. If BPH decides not to release an individual from prison, the board conducts a subsequent lifer hearing in the future.

Under state law, individuals who were under 23 years of age at the time they committed their crime can also be considered for release from prison at a youth offender hearing conducted by BPH that gives special consideration to the fact that these individuals were young at the time they committed their crimes. Unlike lifer hearings, both determinately sentenced and indeterminately sentenced individuals can receive youth offender hearings. Determinately sentenced individuals are generally first scheduled for a youth offender hearing during their 15<sup>th</sup> year of incarceration. Indeterminately sentenced individuals whose sentences are less than 25 years-to-life are generally first scheduled for a youth offender hearing during their 20<sup>th</sup> year of incarceration, while those with greater sentences are generally first scheduled during their 25<sup>th</sup> year of incarceration. Individuals denied release at their hearings are eligible for additional hearings in the future.

Certain individuals are excluded from being considered for release under the youth offender hearing process. This includes (1) second and third strikers; (2) individuals serving sentences of life without the possibility of parole; and (3) certain individuals convicted of additional crimes after reaching 23 years of age, such as those who received a life sentence for such a crime. On average, roughly 900 youth offender hearings are conducted each year, with about 26 percent resulting in BPH granting release.

## **Proposal**

This measure amends state law to expand eligibility for the youth offender hearing process to second strikers. (Second strikers convicted of certain additional crimes after reaching 23 years of age would continue to be ineligible.) As a result, some second strikers could serve shorter prison terms as they could be released earlier than otherwise due to these hearings. The measure specifies that eligible individuals who have served the minimum time required for a youth offender hearing upon the measure’s passage must receive such a hearing by July 1, 2020.

## **Fiscal Effects**

Based on the limited data available, we estimate that less than 100 additional second strikers annually would receive youth offender hearings due to this measure once it is fully implemented.

Initially, the quantity of hearings could be somewhat higher due to the number of second strikers currently in prison that would immediately qualify for a hearing. To the extent that these second strikers are released from prison because of these hearings, the measure would result in state prison savings. However, these savings would be partially offset by various factors. For example, BPH would experience additional costs to conduct more youth offender hearings. Once the measure is fully implemented, we estimate that it would create net state savings likely in the hundreds of thousands of dollars annually.

We note that the measure would accelerate minor state and local costs that would otherwise be incurred in the future. Primarily, the measure would result in a minor increase in state parole and county probation costs to supervise those second strikers who are released from prison earlier than otherwise.

*Summary of Fiscal Effects.* We estimate that this measure would have the following fiscal effect:

- Net state savings likely in the hundreds of thousands of dollars annually, primarily due to individuals serving shorter prison terms.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance